

FILED

NOV 26 2007

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARIO CACHO FIGUEROA,

Defendant - Appellant.

No. 06-30151

D.C. No. CR-02-00038-01-TSZ

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Submitted November 13, 2007^{**}

Before: TROTT, W. FLETCHER, and CALLAHAN, Circuit Judges.

Mario Cacho Figueroa appeals from the district court's order upon limited remand pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc), concluding that it would not have imposed a materially different sentence

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

had it known that the United States Sentencing Guidelines were advisory. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Figueroa contends that the district court would have imposed a materially different sentence had it known that the Sentencing Guidelines were advisory. However, the district court determined on remand that it would not have imposed a materially different sentence had it known that the Sentencing Guidelines were advisory, and this determination is unreviewable on appeal. *See United States v. Combs*, 470 F.3d 1294, 1296-97 (9th Cir. 2006).

AFFIRMED.